

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL STEPHEN KELLER,
Plaintiff,
v.
SCOTT DEGOUGH, et al.,
Defendants.

Case No. 1:21-cv-01707-JLT-EPG (PC)

ORDER REQUIRING DEFENDANTS TO
RESPOND TO NOTICE OF VOLUNTARY
DISMISSAL OR MOTION FOR VOLUNTARY
DISMISSAL WITHIN FOURTEEN DAYS

(ECF No. 57)

Paul Keller (“Plaintiff”) is a prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action.

On September 26, 2022, Plaintiff filed a notice of voluntary dismissal and a motion for voluntary dismissal. (ECF No. 57).¹ Plaintiff asks for dismissal without prejudice. He also appears to ask that each party bear its own costs and attorneys’ fees.

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), as Defendants filed a motion for summary judgment (ECF No. 39), Plaintiff cannot voluntarily dismiss this action via a notice.

¹ On September 27, 2022, Plaintiff filed a declaration, stating that he erroneously dated the filings September 24, 2022, when they were actually executed on September 21, 2022. (ECF No. 58). Plaintiff asks the Court to “fix” the execution date on his filings. (*Id.* at 2). While the Court notes Plaintiff’s assertion, at this time the exact date Plaintiff executed these filings is not relevant, and the Court will not issue a ruling regarding the date Plaintiff’s filings were executed. Moreover, the Court will not “fix” the date on Plaintiff’s filings.

1 Instead, Defendants must stipulate to the dismissal. Fed. R. Civ. P. 41(a)(1)(A)(ii) (“Subject to
2 Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an
3 action without a court order by filing ... a stipulation of dismissal signed by all parties who have
4 appeared.”)

5 Accordingly, IT IS ORDERED that Defendants have fourteen days from the date of service
6 of this order to file a signed notice indicating that they stipulate to voluntary dismissal without
7 prejudice and with each party bearing its own costs and attorneys’ fees, or to file a response to
8 Plaintiff’s motion for voluntary dismissal.

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10 IT IS SO ORDERED.

11 Dated: September 28, 2022

/s/ Eric P. Gray
12 UNITED STATES MAGISTRATE JUDGE
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